

DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622-4970 (not a toll-free call).

Section 6071.—Time for Filing Returns and Other Documents

26 CFR 53.6071-1: *Time for filing returns.*

T.D. 8736

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 53

Time for Filing Form 4720 Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains a regulation that specifies the filing date by which Form 4720 returns must be filed by disqualified persons and organization managers liable for Internal Revenue Code section 4958 excise taxes. These excise taxes are imposed on excess benefit transactions between disqualified persons and section 501(c)(3) organizations (except for private foundations) or section 501(c)(4) organizations.

DATES: This regulation is effective October 7, 1997.

For dates of applicability, see § 53.6071-1(f).

FOR FURTHER INFORMATION CONTACT: Phyllis Haney, (202) 622-4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Foundation and Similar Excise Taxes regulations (26 CFR part 53) under Internal Revenue Code (Code) section 6071.

Those amendments provide guidance on the time for filing the return that is required to accompany payment of section 4958 excise taxes. This rule was first published in Notice 96-46 (1996-39 I.R.B. 7) (September 23, 1996). A notice of proposed rule-making (NPRM) of that rule was published at 62 Fed. Reg. 84, by cross reference to a temporary regulation, (T.D. 8705, 62 FR 25), on January 2, 1997. The deadline for comments on the NPRM was April 2, 1997; no comments were received.

Taxpayer Bill of Rights 2, Public Law 104-168, 110 Stat. 1452 (TBOR2), enacted July 30, 1996, added section 4958 to the Code, which imposes excise taxes on excess benefit transactions. Section 4958 taxes apply retroactively to excess benefit transactions occurring on or after September 14, 1995. The taxes do not, however, apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

An “excess benefit transaction” subject to tax under section 4958 is any transaction in which an economic benefit is provided by an organization described in Code section 501(c)(3) (except for a private foundation) or 501(c)(4) directly or indirectly to, or for the use of, any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the benefit. A “disqualified person” is any person who was, at any time during the 5-year period ending on the date of the excess benefit transaction, in a position to exercise substantial influence over the affairs of the organization. Disqualified persons also include family members and certain entities in which at least 35 percent of the control or beneficial interest are held by persons described in the preceding sentence.

Code section 4958 imposes three taxes. The first tax is equal to 25 percent of the excess benefit amount, and is to be paid by any disqualified person who engages in an excess benefit transaction. The second tax is equal to 200 percent of the excess benefit amount, and is to be paid by any disqualified person if the excess benefit transaction is not corrected within the taxable period. The third tax is equal to

10 percent of the excess benefit amount, and is to be paid generally by any organization manager who knowingly participates in an excess benefit transaction. The maximum amount of this third tax with respect to any one excess benefit transaction may not exceed \$10,000. An “organization manager” is any officer, director, trustee, or any individual having powers or responsibilities similar to those of any officer, director, or trustee. Final regulations under Code section 6011 were published on January 2, 1997, at T.D. 8705 (62 FR 25), prescribing Form 4720 for calculating and paying the first and third taxes described above.

TBOR2 also amended Code section 6033(b) to require section 501(c)(3) organizations to report the amounts of the taxes paid under section 4958 with respect to excess benefit transactions involving the organization, as well as any other information the Secretary may require concerning those transactions. Section 6033(f) also was amended to impose the same reporting requirements on section 501(c)(4) organizations. Those amendments to section 6033 only apply to organizations’ returns for taxable years beginning after July 30, 1996. These and other TBOR2 amendments to the reporting requirements for section 501(c)(3) and section 501(c)(4) organizations are reflected on IRS Forms 990 and 990-EZ beginning with the 1996 versions.

Explanation of Provisions

This regulation provides the general rule that Form 4720 returns will be due on or before the 15th day of the fifth month following the close of the taxable year of any disqualified person or organization manager who is liable for section 4958 excise taxes on excess benefit transactions. The regulations also provide that returns on Form 4720 for taxable years ending after September 13, 1995, and on or before July 30, 1996, will be due on or before December 15, 1996. See also Notice 96-46 (1996-39 I.R.B. 7) (September 23, 1996), and 62 FR 25, 84 (January 2, 1997).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866.

Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Phyllis Haney, Office of Associate Chief Counsel (Employee Benefits and Exempt

Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and record-keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

**PART 53—FOUNDATION AND
SIMILAR EXCISE TAXES**

Paragraph 1. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

§53.6071–1T [Amended]

§53.6071–1 [Amended]

Par 2. In §53.6071–1T, paragraph (f) is redesignated as paragraph (f) of §53.6071–1.

§53.6071–1T [Removed]

Par 3. §53.6071–1T is removed.

Michael P. Dolan,
*Acting Commissioner of
Internal Revenue.*

Donald C. Lubick,
*Acting Assistant Secretary of
the Treasury.*

(Filed by the Office of the Federal Register on October 6, 1997, 8:45 a.m., and published in the issue of the Federal Register for October 7, 1997, 62 F.R. 52256)